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*NEW JERSEY APPELLATE DIVISION HOLDS ARBITRATION CLAUSES IN WILLS ARE  
UNENFORCEABLE*

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On April 21, 2026, the New Jersey Superior Court, Appellate Division issued a decision as a matter of first impression addressing the validity of an arbitration clause contained in a testamentary instrument, such as a Last Will and Testament. The appellate court In re Hekemian, Docket No. A-3001-24 (N.J. Super. Ct. App. Div. April 21, 2026) held that an arbitration clause contained in a testamentary instrument is unenforceable, inconsistent with contract principles, and contrary to the New Jersey Probate Code.

The case arose from administration of the estate of Samuel P. Hekemian died in August 2018 and was survived by his wife and four sons. Hekemian's Last Will and Testament named one of the sons and a close family friend/advisor as co-executors of his Estate and as co-trustees of the testamentary trusts created under the Will. The Will included an arbitration provision stating that any disputes arising from the interpretation or administration of the Will or any of its Trusts shall be settled through arbitration. This Will emphasized that arbitration was the exclusive remedy for resolving such disputes.

The Estate was subject to ongoing litigation and the co-executors sought to settle their first intermediate Estate accounting (reserving the right to compel arbitration) by filing a verified complaint. The wife and one son filed exceptions to the accounting, resulting in the co-executors seeking to compel arbitration of the matter. The trial court denied the co-executors' motion and they appealed.

The co-executors pointed to the New Jersey Arbitration Act ("NJAA"), N.J.S.A. 2A:23B-1, *et seq.*, which provides that arbitration provisions are "valid, enforceable and irrevocable." The co-executors also noted that the wife had previously executed a mirror image Will that also included an arbitration clause, evidencing her acceptance of such a provision that remained unchanged in the Hekemian's 2002 Will. The co-executors also argued that they detrimentally relied on the Will's arbitration provision as the vehicle to settle disputes. Finally, the co-executors claimed that Hekemian's testamentary intent required that the arbitration provision be followed.

The Appellate Division was unpersuaded by the co-executors' arguments. While the Court recognized that strong public policy exists to favor arbitration agreements, it found that the validity of an arbitration agreement is vested in contract law, which requires mutual assent between parties. Without affirmation that both parties have voluntarily relinquished their right to pursue judicial remedies to their claims, such agreement to arbitrate is unenforceable. The Court stated that a Will does not require mutual assent to be effective because it is "a unilateral disposition of property" by the testator. However, the Court noted that a Will is not a contract. This resulted in the appeals court finding that "when interested parties dispute that disposition, they cannot be compelled to arbitrate their disputes, notwithstanding the testator's intent." Hekemian, slip op at 12.

As such, the Appellate Division stated that because each of the beneficiaries were not parties to the Will, they did not have the opportunity to knowingly waive their rights to pursue judicial proceedings to address any disputes under the Will or Trusts. Thus, there could be no meeting of the minds to reach an agreement to arbitrate such disputes. The Court further noted that the same applied to Hekemian's wife and that there was no support that either Hekemian or his wife understood the ramifications of the arbitration provision contained in their reciprocal Wills.

While the NJAA does not explicitly address the use of arbitration clauses within testamentary instruments, the Appellate Division continued to highlight the Superior Court's role in connection to the administration of estates and trusts, and their associated controversies as identified under the New Jersey Probate Code, including the Superior Court's authority in connection to the appointment and removal of fiduciaries and the oversight of estate or trust assets such as fiduciary accountings. The Appellate Division found that an arbitration provision under a Will would be counter to New Jersey's statutory environment empowering the Superior Court to hear, address and resolve such testamentary disputes.

The Appellate Division's April 21, 2026, decision marks a precedential holding expressly finding arbitration clauses in Wills or other testamentary instruments are invalid and unenforceable. This decision demonstrates that the Superior Court cannot be circumvented despite a testator's intent to avoid judicial procedures in connection to the administration of an estate or testamentary trust due to the unilateral nature of such instruments.

For more information on this ruling and its potential impacts, please contact Sarah G. Townsend, Esq. at [stownsend@spsk.com](mailto:stownsend@spsk.com).

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